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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Cory Horton, *on behalf of himself and all  
others similarly situated,*

Plaintiff,

vs.

Cavalry Portfolio Services, LLC,

Defendant.

Case No.: 3:13-cv-0307-JAH-WVG

**PLAINTIFF'S ANSWER TO  
COUNTERCLAIM BY  
DEFENDANT CAVALRY  
PORTFOLIO SERVICES, LLC**

1 Plaintiff Cory Horton hereby submits the following Answer to the Counterclaim  
2 filed in this action by Defendant Cavalry Portfolio Services, LLC.

3 1. In answering paragraph 1, Plaintiff admits that Defendant alleges it is a  
4 Delaware limited liability company with its principal place of business in Vahalla, New  
5 York. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth  
6 of the remaining allegations. Except as herein admitted, the remaining allegations of  
7 paragraph 1 are denied.

8 2. In answering paragraph 2, Plaintiff admits that he is an individual residing  
9 in the State of California.

10 3. In answering paragraph 3, Plaintiff admits that Defendant alleges that this  
11 Court has supplemental jurisdiction over state law counterclaims pursuant to 28 U.S.C.  
12 § 1367. Except as herein admitted, the remaining allegations of paragraph 3 are denied.

13 4. In answering paragraph 4, Plaintiff admits that Defendant alleges that  
14 jurisdiction in this judicial district is proper because Horton's Defendant is currently  
15 pending in this judicial district, and venue is proper under 28 U.S.C. § 1391(b)(3) as  
16 Counterclaim has appeared in the action and concedes that for purposes of this action  
17 that it is subject to personal jurisdiction in this district. Except as herein admitted, the  
18 remaining allegations of paragraph 4 are denied.

19 5. In answering paragraph 5, Plaintiff lacks sufficient knowledge or  
20 information to form a belief as to the truth of the allegations, and on that basis denies  
21 them.

22 6. In answering paragraph 6, Plaintiff admits that the Agreement attached as  
23 **Exhibit A** is a document which speaks for itself. Except as herein admitted, the  
24 remaining allegations of paragraph 6 are denied.

25 7. In answering paragraph 7, Plaintiff admits that the Agreement attached as  
26 **Exhibit A** is a document which speaks for itself. Except as herein admitted, the  
27 remaining allegations of paragraph 7 are denied.  
28

1           8.     In answering paragraph 8, Plaintiff admits that the Agreement attached as  
2 **Exhibit A** is a document which speaks for itself. Except as herein admitted, the  
3 remaining allegations of paragraph 8 are denied.

4           9.     In answering paragraph 9, Plaintiff admits that the Agreement attached as  
5 **Exhibit A** is a document which speaks for itself. Except as herein admitted, the  
6 remaining allegations of paragraph 9, are denied.

7           10.    In answering paragraph 10, Plaintiff admits that the Agreement attached as  
8 **Exhibit A** is a document which speaks for itself. Except as herein admitted, the  
9 remaining allegations of paragraph 10 are denied.

10          11.    In answering paragraph 11, Plaintiff lacks sufficient knowledge or  
11 information to form a belief as to the truth of the allegations, and on that basis denies  
12 them.

13          12.    In answering paragraph 12, Plaintiff lacks sufficient knowledge or  
14 information to form a belief as to the truth of the allegations, and on that basis denies  
15 them.

16          13.    In answering paragraph 13, Plaintiff lacks sufficient knowledge or  
17 information to form a belief as to the truth of the allegations, and on that basis denies  
18 them.

19          14.    In answering paragraph 14, Plaintiff admits that he has not paid Defendant  
20 any sum of money on the Account.

21          15.    In answering paragraph 15, Plaintiff lacks sufficient knowledge or  
22 information to form a belief as to the truth of the allegations, and on that basis denies  
23 them.

24          16.    Denied.

25          17.    Denied as stated.

26          18.    Denied as stated.

27          19.    Denied.

20. Plaintiff incorporates by reference paragraphs 1-19 above as if fully set forth herein.

21. In answering paragraph 21, Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis denies them.

22. In answering paragraph 22, Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis denies them.

23. In answering paragraph 23, Plaintiff lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis denies them.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The allegations of the Counterclaim fail to state a claim against Plaintiff upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

That the cause of action or causes of action, if any, alleged in the Counterclaim are barred by the applicable statute(s) of limitations.

#### **THIRD AFFIRMATIVE DEFENSE**

Defendant has suffered no injury in fact therefore lacks standing to maintain the action.

#### **FOURTH AFFIRMATIVE DEFENSE**

The Court lacks subject-matter jurisdiction over Defendant's claims

#### **FIFTH AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiffs claims are barred under the doctrines of waiver, laches, equitable estoppel and/or ratification.

#### **SIXTH AFFIRMATIVE DEFENSE**

1 Without admitting that any damages exist, if damages were suffered by  
2 Defendant those damages were proximately caused by and contributed by persons other  
3 than Plaintiff. The liability, if any exists, of Plaintiff and/or any responsible parties,  
4 named or unnamed, should be apportioned according to their relative degrees of fault,  
5 and the liability of Plaintiff should be reduced accordingly.

6 SEVENTH AFFIRMATIVE DEFENSE

7 Defendant has suffered no “injury in fact” as a result of the alleged breach of  
8 contract and therefore lacks standing to sue.

9 Dated: August 11, 2014

10 By: /s/ Sergei Lemberg  
11 Sergei Lemberg  
12 Lemberg Law, LLC  
13 Attorneys for Plaintiff  
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**CERTIFICATE OF SERVICE**

I certify that on August 11, 2014 a copy of the foregoing was filed with the Court through the CM/ECF system which sent notice of such filing to the following:

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/s/ Sergei Lemberg  
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